

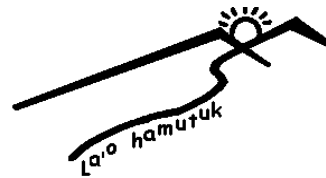
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Submission to the
Australian Parliament Joint Standing Committee on Treaties
Parliament House, Canberra, Australia

from the
Timor-Leste Institute for Development Monitoring and Analysis
La'ó Hamutuk

regarding the inquiry into
The Treaty between Australia and the Democratic Republic of Timor-Leste establishing their Maritime Boundaries in the Timor Sea

18 April 2018

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Summary

- We appreciate both nations' efforts to define their maritime boundary, after decades of struggle and frustration.
- These two nations will receive mutual benefits from these boundaries, and can now build a relationship founded on equality, recognition of national sovereignty and respect for the full rights of both peoples.
- This new Treaty marks the end of a long and sad history of wrongs by rich, powerful countries against Timor-Leste's people.
- Australia should voluntarily return the USD \$5 billion that it has taken from Timor-Leste's maritime territory since the Timor Gap Treaty was signed to profit from Indonesia's illegal occupation.

- The Australian Parliament should not prolong the Treaty's ratification process, make it conditional on Timor-Leste surrendering its rights or resources, or weaken transparency rules.
- Australia should reverse the actions it took in March 2002 and return to the UNCLOS and ICJ mechanisms for resolving international maritime boundary disputes.
- Australia and oil companies operating in Timor-Leste's waters should respect Timor-Leste's commitment to transparency and good governance; re-issued contracts should obey current Timor-Leste law.

Introduction

La'o Hamutuk (Walking Together), the Timor-Leste Institute for Development Monitoring and Analysis, is a Timor-Leste civil society organization founded in 2000. We analyze and monitor the activities of the Timorese Government, its development partners and multilateral agencies, in order to advocate for policies and programs which promote sustainable and equitable economic and social development in Timor-Leste. Through this work, we try to ensure that all of Timor-Leste's people – both women and men, as well as current and future generations – can participate in sustainable, just, inclusive and transparent development which respects human rights and people's cultures.

We appreciate the opportunity to offer this submission as part of your inquiry into the Maritime Boundary Treaty. This is the sixth submission La'o Hamutuk has made to the Australian Parliament, four of which were to your Committee regarding petroleum-related issues.¹ We are happy that the Australian Government has finally adopted policies that address many of the concerns we raised in these submissions, and hope that this document will help create a more equitable relationship between our countries by fostering deeper mutual understanding. As the bilateral relationship evolves from confrontation to cooperation, we hope that you will visit our country and listen to our people, rather than relying on Australian 'experts,' many of whom know little about our reality.

We appreciate the results of the efforts of both our nations.

Since our founding in 2000, La'o Hamutuk and other civil society organizations in Timor-Leste have advocated for the definition of a fair maritime boundary between Timor-Leste and Australia, and we celebrate that the two governments have finally achieved this goal.

The Treaty signed on 6 March in New York opens a new chapter in the history of diplomatic relations between Timor-Leste and Australia, which were tense for many years because of Australia's claim over areas of the Timor Sea that belong to Timor-Leste under international legal principles. We trust that this new Treaty will pave the way for our two nations to share maritime benefits and to build a relationship based on equality and mutual respect for each other's sovereignty. As Australia's National Interest Analysis for this Treaty states, "A stable and prosperous Timor-Leste is in Australia's national interest."

In addition, this Treaty sets a global precedent as the first time that a small nation has brought a larger neighbour to the negotiating table by using Compulsory Conciliation under UNCLOS Article 298 and Annex V. Although initially rejecting the jurisdiction of this process, Australia eventually accepted it, and we

¹ On cancelling CMATS: <http://www.laohamutuk.org/Oil/Boundary/JSCT/2017/Sub16LaoHamutuk.pdf> (2017)
On Australia-Timor-Leste relations: <http://www.laohamutuk.org/Oil/Boundary/2013/LHSubAustPNenquiry28Mar2013.pdf> (2013)
On CMATS <http://www.laohamutuk.org/Oil/Boundary/JSCT/07LHtoAusJSCTreCMATS.htm> (2007)
On the Sunrise IUA <http://www.laohamutuk.org/Oil/Sunrise/03LHtoJSCTonIUA.html> (2003)
On the Timor Sea Treaty <http://www.laohamutuk.org/Oil/Boundary/jsctlh.html> (2002)

appreciate that. The world has learned a new way to reduce disputes and conflict between neighbouring coastal states.

In 2004, our organization, civil society, students, citizens and others in Timor-Leste formed the Movement Against the Occupation of the Timor Sea (MKOTT) to coordinate a nonviolent campaign of demonstrations, lobbying, advocacy and public education. Since then, MKOTT has worked to end one of the last remnants of Indonesia's illegal occupation of Timor-Leste: Australia's continued occupation of significant parts of our maritime territory.

Nine years later, Timor-Leste's government joined this effort, after learning of Australia's bad-faith activities during CMATS negotiations and realizing that the concessions Dili had made to enable oil exploitation had been unfairly coerced. The struggle has been long but the occupation is finally over, and Timor-Leste's national sovereignty is nearly complete.

Although the Australian government only recently accepted a median-line maritime boundary with Timor-Leste, many Australian citizens have long advocated for this position. On behalf of Timor-Leste's civil society, La'o Hamutuk appreciates the many years of dedicated, difficult work by the Timor Sea Justice Campaign and other Australians who eventually persuaded your government to respect Timor-Leste's sovereignty.

The Treaty clarifies some mistakes of the past.

Since the 1970s, Timor-Leste's people have been victims of Australia's claim over maritime areas which are rightfully ours according to international law. This claim has no scientific basis as a "continental shelf" boundary; geologists have known for decades that our two nations are on the same continental shelf.²

Until 1998, Australia abetted Indonesia's brutal and illegal occupation of our country, providing political, military and diplomatic assistance which help kill nearly 200,000 of our people. However, Australia's foreign policy aided the eventual Indonesian occupation well before the 1975 invasion; especially after Australia and Indonesia signed seabed boundary treaties in 1971 and 1972.

During the darkest 24 years of our history, Australia closed its eyes to the slaughter of our people in order to access the oil and gas riches of the Timor Sea through the 1989 Timor Gap Treaty. During the last 14 years, Australia has obliged Timor-Leste's leaders to accept Australia's stubbornness and sign several revenue-sharing agreements to enable oil and gas production – the principal source of revenue for this new nation.

We cannot avoid noticing that Australia delayed agreeing to a maritime boundary until nearly all of the known oil and gas fields in the contested area were empty or nearly depleted. Kitan, Buffalo and Elang-Kakatua have been decommissioned as no longer commercially viable, more than 98% of government revenues from Bayu-Undan have been received, and Laminaria-Corallina is almost empty. Furthermore, the boundaries relevant to Laminaria-Corallina and Greater Sunrise will not be finalized until those fields are exhausted. Although this dispute is mainly about sovereignty for Timor-Leste, Australia's mercenary thirst for petroleum wealth appears to have trumped legal principles and mutual respect, and Greater Sunrise is probably the only significant reserve remaining.

Australia should voluntarily return the money it has taken.

In August 2017, the two nations agreed on a maritime boundary as part of a comprehensive packet agreement. As described above, this Boundary Treaty reverses the history of wrongs Australia has

² The current Treaty uses the term "continental shelf" as a synonym for "seabed," redefining language and confusing the unfounded rationalization from past years.

committed against our people. However, the Treaty continues to legitimize unjust practices through which Australia has taken assets belonging to the people of Timor-Leste. Under this Treaty and its predecessors, the Australian government has collected about five billion U.S. dollars from oil and gas fields which it now recognizes are in Timor-Leste's territory – about twice as much as the total amount of “aid” that Australia has spent on Timor-Leste.

Article 10 of the new Boundary Treaty says that Timor-Leste shall not “have a claim for compensation” for money collected by Australia under prior treaties and agreements. However, nothing in the Treaty prevents Australia from voluntarily returning this stolen money to Timor-Leste.

We believe that the two countries should not only comply with each article of the Treaty, but should also follow the principles and values that the Treaty promotes and inspires. The preamble of the Treaty mentions “promoting Timor-Leste's economic development” and being “good neighbours and in a spirit of cooperation and friendship ... in order to achieve an equitable solution.” In this new spirit of mutual respect, La'o Hamutuk recommends that Australia give back what it took in during the nearly three decades since it signed the Timor Gap Treaty.

The Boundary Treaty should be ratified quickly and unconditionally.

This Treaty will become legally in force after both Parliaments have ratified it. We appreciate that the Australian Parliament has quickly begun a public inquiry and hope you will ratify the Treaty expeditiously. However, since Timor-Leste's Parliament has been dissolved, the earliest it can ratify the Treaty is a month or two after the 12 May election. Until both countries have ratified the Treaty, Australia continues to receive 10% of Bayu-Undan revenues, worth about USD \$4 million every month.

We hope that Australia's ratification process will not delay the Treaty from coming into force, and that you will not impose conditions on Timor-Leste prior to ratification. We recall the situation in 2002-2003, when Australia held up ratification of the Timor Sea Treaty for ten months, until Timor-Leste had signed the Unitization Agreement giving Australia 82% of Greater Sunrise revenues. This should not happen again.

Australia should re-join international boundary dispute mechanisms.

In March 2002, Australia unilaterally withdrew from international mechanisms for resolving maritime boundary disputes under UNCLOS and the International Court of Justice. At that time, Australia was worried that a binding, impartial, third-party ruling might not allow it to continue to take resources from territory which Australia now acknowledges belongs to Timor-Leste. Australia demonstrated how a large nation could violate the sovereign rights of a small neighbour, rejecting international mechanisms in favour of inherently unequal bilateral negotiations.

Sixteen years later, Australia has signed the new Treaty which recognizes Timor-Leste's rights under international law. Through this welcome step, Australia has shown that it accepts a fair boundary settlement. Therefore, Australia should reverse the action it took in March 2002 to prevent Timor-Leste from exercising its sovereign right to use international processes, and return to the ITLOS and ICJ maritime boundary dispute resolution mechanisms. This would facilitate fair resolution of boundaries with your other neighbours, as well as provide a good example for other nations that dispute resolution should respect international law and the sovereign rights of every country.

Now that Australia and Timor-Leste have agreed on their seabed and water column boundaries, Timor-Leste has to resolve its maritime boundaries with Indonesia on both sides of our half-island nation. Australia and Indonesia will be able to finalize and ratify their provisional 1997 water column boundary, as the seabed boundaries between these two nations were settled 46 years ago. We look forward to the near future, when both of Timor-Leste's neighbours have finalized their maritime boundaries with us and with each other.

Australia should respect Timor-Leste's commitment to transparency.

Under this new Treaty, four Production-Sharing Contracts (PSCs) which had been based on the Timor Sea Treaty will be cancelled or replaced. We are disappointed that the new Treaty does not explicitly mention contract transparency, although we expect that the new contracts for Buffalo, Kitan, Bayu-Undan and Greater Sunrise will be public as required by Timor-Leste law.

The existing PSCs for Bayu-Undan and Greater Sunrise, which were signed in 2003, have never been made public. However, in 2005 Timor-Leste enacted Petroleum Activities Law No. 13/2005 which states that such contracts are public documents, and all PSCs signed since then are available.³ The Extractive Industries Transparency Initiative (EITI) standard that Timor-Leste complies with also requires contract transparency. Although Australia has had less rigorous transparency requirements, these fields are now in Timor-Leste's territory and should follow the good governance and transparency requirements of this nation.

Although the Boundary Treaty has already been signed and is difficult to revise, we believe that the two countries should agree that the new contracts be made public, and should inform the oil companies that they are expected to comply with Timor-Leste law, and not seek exceptions to evade our standards.⁴ As many countries have sadly learned, lack of transparency in petroleum activities can lead to corruption, environmental damage and bad governance, as well as limit economic development. Timor-Leste is proud of its transparent system of managing petroleum development and revenues, and neither Australia nor the oil companies should undercut that.

This concludes our submission to the Honourable Members of the Joint Standing Committee on Treaties, and we are grateful for your attention to our concerns. We are happy to answer any questions or provide additional information regarding issues discussed in this submission, and would welcome the chance to appear before your Committee in person.

This submission is authorized by our organization, including for publication.

Written by :
Researchers



Juvinal Dias

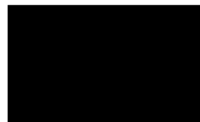


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³ The contracts are available at <http://www.laohamutuk.org/Oil/PSCs/10PSCs.htm>; they are also on ANPM's website.

⁴ Carnarvon's most recent quarterly report says that Timor-Leste will enact "special legislation" to maintain fiscal, security of title, and legal rights as defined in Carnarvon's current contract with Australia for the Buffalo oil field. (See <http://www.carnarvon.com.au/wp-content/uploads/2018/04/MarQ1.pdf>). We hope that this legislation will not revoke transparency requirements.